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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS

Written statement submitted by the International Fellowship of Reconciliation, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[1 April 1997]

1. In the light of convincing evidence that the Government of Japan and the Japanese Immigration Control Bureau, by acts described below, have violated the International Covenant on Civil and Political Rights (ICCPR) and the principles established with respect to the treatment of persons deprived of their liberty, the Immigration Review Task Force, a non-political, non-governmental and non-profit organization, in cooperation with the International Fellowship of Reconciliation, respectfully requests the Commission on Human Rights:

(a) To initiate as soon as possible investigations concerning such cases of human rights violations by the Government and authorities of Japan, and to urge the Government of Japan to take corrective measures, including the amendment of laws as necessary.

(b) To urge organs and agencies of the United Nations, and non-governmental organizations to initiate as soon as possible investigations concerning such human rights violations by the Government and immigration authorities of Japan.

2. According to the Japanese Immigration Control and Refugee Recognition Act (hereinafter, the Japanese Immigration Law), an alien may be arrested and detained when a reason for his/her deportation exists. The same Law is interpreted as providing that aliens who are to be deported must be detained first. Thus, all aliens who are deported are detained by the immigration authorities.

3. Over the past two to three years, approximately 60,000 aliens in Japan have been deported by the immigration authorities. However, the immigration authorities have not duly respected and ensured the rights provided for in the ICCPR to aliens who have been arrested and detained by them.

Violations of article 9.4

4. Under the Japanese Immigration Law (s. 39) when reasons for deportation are recognized to exist, an alien may be arrested and detained after a warrant for his arrest and detention has been issued by a high ranking inspection officer of the Immigration Control Bureau. However, the fact that an alien may be arrested and detained simply when an official of an administrative branch of the Government who is posted within the Immigration Control Bureau issues a warrant for such purposes, and that the role of a court of justice is not recognized in the course of these proceedings, constitutes a violation of article 9.4 of the ICCPR.

5. Further, article 9.4 states that "anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention ...". However, there are no provisions in the Japanese Immigration Law which respect or ensure this right. That is to say that although an alien who has been deprived of his or her liberty under the conditions described in the preceding paragraphs, may contest the validity of the detention order issued against him/her by filing an objection in a court of the government administration, the Japanese Immigration Law does not provide that such an alien must be informed of his or her right to pursue such proceedings. As the majority of aliens in Japan are unfamiliar with Japanese laws, it is essential that there should be a systematic procedure whereby they may be informed of their fundamental rights in instances of arrest and detention. Thus, by association, the right of anyone deprived of his liberty to appeal to a court of justice "without delay", is not respected and ensured satisfactorily under the Japanese Immigration Law.

6. Likewise, the Japanese Immigration Law fails to give effect to the Covenant in that the law does not respect and ensure that aliens are informed of their right to have legal assistance. Although aliens deprived of their liberty may have legal assistance to defend and protect their rights, they are not informed of this right. As such, article 9.4 is infringed.

Violations of article 9.1

7. Moreover, according to the present Japanese Immigration Law, an alien who has been issued a "deportation order" may be detained for an "indefinite period of time" by the immigration authorities. During this indefinite period, an alien is not "entitled to take proceedings before a court, in order that that court may decide without delay the lawfulness of his detention". When detention is to be terminated and when deportation is to be executed is left to the discretion of the Immigration Control Bureau. Accordingly, unlawful situations arise wherein aliens are detained for an unreasonable and lengthy period of time (cf. Carballal v. Uruguay).

Violations of article 17

8. In addition, aliens deprived of their liberty are strictly restricted in receiving correspondence, and telephone calls from the outside. In some facilities, telephone calls to and from the outside are prohibited, and postal correspondence is censored or withheld. This type of interference is arbitrary or unlawful, as it exceeds normal restriction imposed for the maintenance and purpose of detention.

Violations of articles 7 and 10.1

9. Numerous cases of physical and sexual assault of aliens under detention by immigration officers have been reported. These assaults have occurred in a repeated and systematic manner, according to a complaint made by an immigration officer. The officer stated that groups of several immigration officers have carried out collective assaults against aliens. On one occasion, several officers collectively kicked and beat the face, head, shoulders and legs of a woman who was being detained, while a large number of officers who were present at the time witnessed and did nothing to stop the assault, he said.

10. According to other testimonies, male immigration officers have solicited female detainees to take off their clothing in front of them, have sexually harassed the women by touching their breasts and other parts of their bodies, and have raped the women. This type of conduct clearly amounts to "cruel, inhuman or degrading treatment".

11. Also at immigration detention facilities, humanitarian problems include but are not limited to the use of solitary confinement cells as punishment measures, the arbitrary refusal of outdoor exercise to detainees, and the inadequacy of medical facilities and lack of proper care and treatment.

Violation of article 13

12. Article 13 is violated when aliens who are lawfully in Japan, are arrested, detained and issued with a deportation order on the basis of alleged misconduct determined by the Japanese Penal Code, and when they are deported before they have had the opportunity to submit arguments against their e::pulsion and to have their case reviewed by, and be presented for that purpose before, the competent authority.

Conclusion

13. Clearly, practices and policies relating to deportation procedures as carried out by the Japanese immigration authorities violate articles 7, 9.1, 9.4, 10.1, 13 and 17 of the ICCPR. Despite efforts made by the Immigration Review Task Force to request the Government of Japan and the Immigration Control Authority to remedy these situations, neither institution has done so and they have allowed these situations to remain unchanged. Therefore, we respectfully request the Commission on Human Rights to initiate investigations concerning these situations and to urge the Government of Japan to remedy these situations as soon as possible.